

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1983.

— 624

GEORGE W. DRURY, APPELLANT,

vs.

JENNIE MOULTON AND CLARENCE MOULTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JANUARY 29, 1909.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1983.

GEORGE W. DRURY, Appellant,

vs.

JENNIE MOULTON ET AL.

a Supreme Court of the District of Columbia.

Equity. No. 28043.

GEORGE W. DRURY, Complainant,

vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

UNITED STATES OF AMERICA,

District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1

Bill.

Filed September 19, 1908.

In the Supreme Court of the District of Columbia.

Eq. No. 28043.

GEORGE W. DRURY, Complainant,

vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

To the Supreme Court of the District of Columbia, holding an equity court for said District:

The complainant on information and belief respectfully shows to the court as follows:

1. That he is a citizen of the United States and a resident of the District of Columbia and brings this suit in his own right and as heir at law and next of kin entitled to one-half of the estate of Ida Drury hereinafter referred to.

2. That the defendants are all citizens of the United States and are residents of the State of Oregon and are sued in their own right and as the wrongful grantees, distributees and holders of the entire estate of Ida Drury deceased, hereinafter mentioned.

3. That Jennie Moulton is the wife of Clarence Moulton and prior to her marriage was Jennie Drury. That said Jennie Moulton is a sister of Ida Drury hereinafter referred to and also a sister of the complainant hereto. That Jennie Moulton and complainant are the only sister and brother of said Ida Drury, whose father and mother are dead, and are the sole heirs at law and next of kin of Ida Drury, now deceased.

4. That Ida Drury at one time was a resident of the District of Columbia and later of the State of Connecticut but departed this life in the State of Oregon, in an insane asylum in April 1902. That although not married Ida Drury in the later years of her life went by the name of Mrs. William Siebs and Dorothy Siebs, but by what name she was known in the States of Oregon and Washington in the last years of her life or by what name she was described after her death is to your complainant unknown. That for some years prior to her death Ida Drury had been mentally unbalanced by reason of excesses and other causes and incapable of attending to her affairs and unable by reason of her weak mental condition to resist artifices on the part of others around her having designs upon her property. That this mental unsoundness became very apparent while Ida Drury in the nineties was living in the City of Bridgeport, State of Connecticut, and resulted in acute manifestations of insanity in the last months of her life in Bridgeport. That Jennie Moulton who had married Clarence Moulton and then lived at Tacoma in the State of Washington learned of the mental unsoundness of Ida Drury and likewise was aware of the fact that she had accumulated considerable property. That Jennie Moulton and her husband Clarence Moulton went to Bridgeport and there obtained custody of the person of said Ida Drury and induced her to leave Bridgeport with them in June 1899. That said Ida Drury insisted on coming to Washington where were her brother your complainant and her father but defendants falsely stated to said Ida Drury her father would not see her. That Ida Drury brought with her to Washington twenty-five thousand dollars in cash, jewels and ornaments to the value of twenty thousand dollars, bonds in the New York Central Company and other corporations to the value of forty thousand dollars and other property to your complainant unknown. That said Ida Drury in the City of Washington exhibited her aforesaid personal estate to the defendants and to others. That the defendants observed her weak and unsound mental condition and formed a conspiracy and scheme to divest Ida Drury of her estate and to convert the same to their own uses to the exclusion of said Ida Drury and of any other person interested in her property or estate, and especially to the exclusion of your complainant. That the mental condition of said Ida Drury continued unsound from the time she left Bridgeport and grew worse until her death less than three years later. That pursuant to their conspiracy to acquire control and dominion over

Ida Drury and her estate the defendants induced and brought about the removal of Ida Drury from the City of Washington to the home of the defendants in the City of Tacoma, State of Washington. That the- installed Ida Drury in their house and kept watch control and dominion over her and not long thereafter had her committed to an insane asylum. That by some means to your complainant unknown the defendants acquired the estate of said Ida Drury including the money, jewels and bonds and stocks heretofore referred to and converted the same to their own use. That after obtaining control and dominion over her person and her estate they prevented all communication on her part with your complainant who has only just learned the fraud that was perpetrated upon him and kept your complainant in ignorance of his sister's whereabouts and mental condition and also with reference to her estate and what had become thereof. That Ida Drury in the year 1902 died in the insane asylum in Portland Oregon to which she had been confined and then in further pursuance of the conspiracy the body of Ida Drury was removed to Tacoma and there buried. That all knowledge of the death of said Ida Drury was withheld from your complainant by the said defendants, that your complainant's whereabouts and address was known to them, that if any court procedure of any kind was had with reference to the estate of said Ida Drury or Mrs. Siebs all knowledge thereof was kept from your complainant and all other persons having any possible interest in the estate except the defendants. Your complainant alleges that by these wrongful acts the said defendants obtained illegally the entire estate of said Ida Drury, amounting as your complainant is informed and believes to more than \$75,000 and cheated and defrauded your complainant out of his rightful share of one-half of said estate as one of the two heirs at law and next of kin of said Ida Drury who, as stated, was incompetent to make any valid gift will or other conveyance of her estate for some years prior to her death and at any time after defendants assumed their custody over her.

5. That with intent to hinder, delay and defraud complainant and in pursuance of their original conspiracy to keep to themselves the entire estate of Ida Drury the defendants converted the entire estate of Ida Drury to their own use and secreted the same and by various means and devices led all persons who might communicate information to your complainant to believe that Ida Drury's estate had by her become wasted until practically nothing remained.

6. That by reason of these wrongful acts and the conspiracy alleged the defendants are in equity trustees for your complainant to the extent of a one-half interest in the estate of Ida Drury as the same existed at the time of the unlawful dominion of defendants over Ida Drury with interest thereon or any increment thereof as your complainant may elect on obtaining full information with reference to said estate and your complainant is entitled to an accounting and discovery with reference to said Ida Drury's estate from defendants and full and complete knowledge and information with reference to what was done therewith and has become

thereof. That the defendants by their acts and conduct have shown their purpose and intention not to account or discover to your complainant anything whatsoever with respect to the estate of said Ida Drury now deceased or its disposition.

7. That the defendants at this time are temporarily in the District of Columbia. That the defendant Jennie Moulton recently has become entitled to a half interest in the following described real estate in the City of Washington, District of Columbia:

Lot 33 square 389 fronting 24 feet 6 inches on F street between 9th and 10th streets southwest by a depth of 124 feet 6 inches and improved by house No. 918 F street southwest;

Lot 34 square 389 fronting 24 feet 6 inches by a depth of 124 feet 8 inches on F street between 9 and 10th streets southwest;

Lot 35 square 389 fronting 24 feet 6 inches on F street between 9th and 10th streets southwest by a depth of 124 feet 8 inches;

West half of lot 36 square 389 fronting 12 feet 6 inches by a depth of 124 feet 8 inches and improved by house known as No. 916 F street southwest;

East 5 feet front of lot 17 and west 20 feet front by depths thereof, namely, 122 feet 2 inches in square 496, improved by house known as No. 486 F street southwest;

West 20 feet front of Lot 6 square 494 with depth of 90 feet 5 inches, being on the corner of 6th and F streets southwest and improved by house known as No. 511 E street southwest;

South 18 feet of lot 18 square 494 by depth thereof, namely, 100 feet situated on 6th street north of E streets southwest;

And lot 6 square 461 improved by house known as No. 211 7th street southwest.

That your complainants are informed and believe and therefore aver that in furtherance of their conspiracy to defraud your complainant the defendants have planned to dispose of all their right, title and interest in the foregoing real estate and to convert the same into cash and secrete the same and depart the jurisdiction so
7 that your complainant may be made powerless to right the wrong done him with respect to the estate of Ida Drury and are conspiring to hinder, delay and defraud your complainant of what the defendants lawfully owe him and to which he is from them entitled to an accounting.

That your complainant has no adequate remedy at law and is remediless save in a court of equity and except such relief as by a court of equity may be afforded him.

Wherefore, the premises considered, your complainants pray:

1. That the defendants Jennie Moulton and Clarence Moulton be made defendants hereto and served with process and required to answer the exigencies of this bill.

2. That the defendants Jennie Moulton and Clarence Moulton be required to answer under oath and to disclose what monies they received directly or indirectly from Ida Drury or said Ida Drury under some other name, when and on what consideration and what was done with the same and also the same information with relation to jewels, bonds stocks, or other things of value. And that said defendants and each of them be required further to answer under

oath specifically the interrogatories propounded and hereunto annexed.

3. That the defendants be required to account to your complainant for a one-half interest in the estate of Ida Drury as the same existed at the time defendants assumed control and dominion over said Ida Drury and her estate, with interest thereon or the increment thereof as your complainant after full discovery and accounting may elect.

8 4. That the defendants be enjoined and restrained from disposing or attempting to dispose of their interest or interests in the real estate described in paragraph seven of this bill of complaint.

5. For such other and further relief as the nature of the case may require and as to equity may seem just and proper.

GEORGE W. DRURY,
Complainant.

KAPPLER & MERILLAT, *Solicitors.*

DISTRICT OF COLUMBIA, ss:

I, ——— on oath say I have read the foregoing bill by me subscribed and know the contents thereof and that the facts therein stated on information and belief I believe to be true and the facts therein stated as true are true.

GEORGE W. DRURY.

Subscribed and sworn to before me this 19 day of September 1908.

[SEAL.]

MARTIN P. WARD,
Notary Public.

Interrogatories to be Answered by Each Defendant.

1. When did you last see Ida Drury or that woman under another name in Bridgeport, Conn.? If under another name state that other name.

9 2. What was the occasion of your seeing her in Bridgeport?

3. At that time did she have any estate? If so of what did it consist then and if there had been any change in the form of her estate in the last two years before she left Bridgeport state what its former form was and of what it consisted and when the change was made.

4. Did you talk with her in Bridgeport concerning her estate or at any earlier time or other place? If so answer fully what was said, where and when, by her and by you.

5. When she left Bridgeport of what did her estate consist? Describe the same in detail, stating quantities and if real estate or securities identify the same fully; also state what each kind of property was worth to the best of your knowledge.

6. Was any of the estate mentioned in answer to interrogatory five converted or changed in form? If so state when, why and in what new form it was invested.

7. When did Ida Drury or Mrs. Sieb leave Bridgeport and with whom?

8. When did she come to Washington and with whom?

9. Did you suggest she should be informed her father in Washington would not see her? If so why.

10. Did you make any effort to prevent her seeing her nearest of kin?

11. When she came to Washington what estate or property did she bring with her? Describe in detail this estate and identify the several items making up the estate.

10 12. How long did she remain in Washington?

13. Where did she go when she left here and who went with her?

14a. Did she on the railroad train or at stations while you were traveling with her manifest any symptoms or evidences of mental unsoundness? If so describe the same.

15. When did she arrive in Tacoma and where did she go on arrival? How long did she reside with you in Tacoma?

16. Did she give any evidences of mental unsoundness in Tacoma, when, and what form did it take?

17. By what name was she known in the State of Washington and by what name in the state of Oregon?

18. Was she ever married? If so when, where and by whom and what became of her husband?

19. Was she committed to an asylum or sanitarium in Washington state or Oregon? If so when and by whom and what procedure was adopted to secure her committal?

20. What part had you in her committal to a sanitarium or asylum?

21. If you answer interrogatory 20 that you had any part therein why did you so take part?

22. Had she prior thereto or did she subsequently give, transfer, assign, deed or will to you anything of value? If so what, when, what was the value of each thing and what was the consideration for its gift, transfer, assignment, deed or bequest to you?

11 23. What property or estate had she when she arrived in Washington state or while on her way there and what became of the same? Answer fully and in detail.

24. If you received any part of her property or estate what have you done or did you do with the same and where is it now?

25. Did she die in an asylum or sanitarium? Where did she die and when and by what name was she known where she died?

26. What was the cause of death?

27. Where was she buried?

28. What if any court proceedings were had with reference to her property or estate, in what court and under what name?

29. What if any estate was administered through the court and what had become of any part of her estate which she had when in the east which was not administered through the court?

30. What if any representations were made to the court as to her

having living next of kin and who they were and their places of residence? Answer fully.

31. What if any notice was sent complainant as to her death or as to her estate or what disposition was made thereof and by whom? State how the notice, if any, was sent.

32. Did you make any representations to any person that she had wasted her estate so that instead of having \$75,000 or thereabouts she had only a little amount of money or property with which to meet her expenses?

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Plea, Answer, and Exhibits.

Filed October 27, 1908.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28043.

GEORGE W. DRURY, Complainant,
vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

The joint plea of the above-named defendants Jennie D. Moulton and Clarence E. Moulton (in complainant's bill called Jennie Moulton and Clarence Moulton) to the bill of complaint of George W. Drury, complainant, and the joint and several answer of the same defendants to that part of said bill which charges these defendants with fraud or combination, or both.

These defendants, jointly, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill mentioned to be true, in such manner and form as the same are therein and thereby set forth and alleged, to all of said bill, including all of the relief and all of the discovery therein sought, do plead in bar, and for plea say:

That Dorothy Drury Siebs, the person in complainant's bill referred to as "Mrs. William Siebs," "Dorothy Siebs," and
13 "Ida Drury," sister of complainant and defendant Jennie D. Moulton, departed this life in the County of Pierce, State of Washington, on, to wit, the 30th day of April, A. D., 1902, leaving a last will and testament in which she bequeathed all of her estate, wheresoever situate, to her sister, defendant Jennie D. Moulton; that said last will and testament was on, to wit, the 3rd day of May, A. D. 1902, duly filed for probate in the Superior Court of the State of Washington for Pierce County; that said Superior Court was a Court of record and of competent and original jurisdiction in the premises; that thereafter on, to wit, the 5th day of May, A. D., 1902, the two subscribing witnesses to said last will and testament, each of lawful age and competent, appeared in said Superior Court and, being duly sworn in open Court, testified each for himself that he

resided in the County of Pierce, State of Washington; that he knew Dorothy Drury Siebs on the 25th day of July, A. D., 1899, the date of the said will and testament then shown to him and marked as filed in said court on the 3rd day of May, A. D., 1902, and purporting to be the last will and testament of the said Dorothy Drury Siebs; that he was one of the subscribing witnesses to said instrument; that he also knew at the said date of said instrument the other of said subscribing witnesses; that said instrument was signed and sealed by the said Dorothy Drury Siebs at Tacoma, in the County of Pierce, on the said 25th day of July, A. D., 1899, in the presence of himself and of the other said subscribing witness, and that the said

14 Dorothy Drury Siebs thereupon published the said instrument as, and declared to them the same to be, her last will

and testament, and requested them in attestation thereof to sign the same as witnesses; that he then and there in the presence of the said Dorothy Drury Siebs, and in the presence of the other subscribing witness, subscribed his name as witness to the said instrument; that at the time of executing said instrument, to wit, the 25th day of July, A. D., 1899, the said Dorothy Drury Siebs was over the age of 18 years, to wit, of the age of 35 years, or thereabouts, and was of sound and disposing mind, and not acting under duress, menace, fraud, undue influence or misrepresentation. Said testimony was reduced to writing and in open Court then and there subscribed and sworn to by each of said witnesses on said 5th day of May, A. D. 1902, and filed in said Superior Court, and the petition praying that said last will and testament be admitted to probate coming on regularly to be heard on said last named day, and it appearing unto the court that the said Dorothy Drury Siebs died on or about the 30th day of April, A. D., 1902, at Fort Steilacoom, Pierce County, State of Washington, leaving estate in the County of Pierce, State of Washington, that said document is the last will and testament of said Dorothy Drury Siebs, deceased, and was duly executed by her in her lifetime, that the same was duly attested as required by law, that said decedent at the time of executing said will was of lawful age and of sound mind and not under duress, menace, fraud, or undue influence, or in any respect incompetent to execute said will, the said court, declaring itself thus advised did then and

15 there pass its decree admitting said last will and testament to probate, and appointing Jennie D. Moulton executrix of said last will and testament, to serve without bond or letters testa-

mentary as provided by law and said will; that Jennie D. Moulton, the said executrix, having thereafter, to wit, on the 9th day of May, A. D., 1902, made oath that the will of Dorothy Drury Siebs, deceased, filed in said court on May 3, 1902, and duly admitted to probate on May 5, 1902, was to the best of her knowledge and belief the last will and testament of said Dorothy Drury Siebs, and that she knew of no other and subsequent will of said decedent, and notice to all creditors of the said Dorothy Drury Siebs, deceased, having been duly published once each week for five consecutive weeks commencing on, to wit, the 17th day of May, 1902, and ending on, to wit, the 14th day of June, 1902, and the affidavit of the business

manager of the "Tacoma New Herald," the newspaper printing said notice to creditors, alleging that said newspaper was generally circulated among its regular subscribers during all of said time, and that said notice was published in the newspaper proper and not in supplement form, having been duly subscribed and sworn to on, to wit, the 14th day of June, A. D., 1902, and filed in said Superior Court on July 9, 1902, and the said Jennie D. Moulton, executrix, having returned to and filed in said Superior Court her inventory of all of the property of said estate in the manner required by law; and the said court being fully advised in the premises did on, to wit, the 9th day of July, A. D., 1902, by reason of the laws of said State of Washington then in force and of the premises, pass its decree declaring the estate of the said Dorothy Drury Siebs (née Ida

Drury) fully solvent, and the said Jennie D. Moulton entitled to all the property and effects of said decedent, subject to the payment of the debts of said estate, and the said Jennie D. Moulton as executrix of said estate authorized and empowered to settle said estate as provided by said last will and testament without further intervention of said Court, and to deliver to herself, the said Jennie D. Moulton, all the property belonging to said decedent, Dorothy Drury Siebs (née Ida Drury), to have and to hold the same to herself, her heirs and assigns to her own use forever; that the said Jennie D. Moulton did so settle and administer said estate and on, to wit, the 20th day of August, A. D., 1903, file in said Superior Court her final report as said executrix, and the said Court did on said last named day by its decree duly passed, approve said final report and discharge said executrix from all further obligation and liability in the premises; that a true and complete copy of the record in said administration as it exists in the said Superior Court for Pierce County, Washington, certified under the seal of said Court, is attached hereto, marked "Respondents' Exhibit A," and prayed to be made a part hereof.

That the probate of said will and the administration and distribution of said estate were open and public acts, directed by the solemn and judicial decrees or judgments of said Court of record, and conformed in every essential to the requirements of the laws of the State of Washington then in force, as well as with the rules and regulations of said Court.

That the laws of the said State of Washington then in force provided, among other things, as follows, to wit:

"If any person interested in any will shall appear within one year after the probate or rejection thereof, and, by petition to the superior court having jurisdiction, contests the validity of said will, or pray to have the will proven which has been rejected, he shall file a petition containing his objections and exceptions to said will, or to the rejection thereof. Issue shall be made up, tried and determined in said court respecting the competency of the deceased to make last will and testament, or respecting the execution by the deceased of such last will and testament under restraint or undue influence or fraudulent representation, or for any other cause affecting the validity of such will."

"Upon the filing of the petition referred to in the next preceding section, a citation shall be issued to the executors who have taken upon them the execution of the will, or to the administrators with the will annexed, and to all legatees named in the will residing in the state, or to their guardians if any of them are minors, or their personal representatives if any of them are dead, requiring them to appear before the court on a day therein specified, to show cause why the petition should not be granted."

"If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, save to infants, married women, persons absent from the United States, or of unsound mind, a period of one year after their respective disabilities are removed."

That complainant did not contest the validity of said last will and testament within one year after the probate thereof.

That the proceedings in probate of said will were *in rem*, of which said Superior Court had exclusive jurisdiction, and this Honorable Court, under the full faith and credit clause of the constitution of the United States, is without jurisdiction to attack or set aside the said judicial determinations of said Superior Court.

18 That the laws of descent and distribution in force in the said State of Washington, the jurisdiction in which said Dorothy Drury Siebs (née Ida Drury) died, at the time of the death of said decedent, and in which her estate was situate at the time of her death, and the laws which govern the distribution of her said estate, provide as follows, to wit:

"When any person shall die possessed of any separate personal estate, or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows:"

* * * "If the decedent leaves no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father and mother, if both survive. If there be no father nor mother then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brothers or sisters, by right of representation. If decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother."

That the mother and father of said Dorothy Drury Siebs (née Ida Drury) were Louisa Drury, and William C. Drury, respectively; that the said mother pre-deceased said decedent many years, as is shown by the death certificate of the said mother, Louisa Drury, filed among the records of the District of Columbia, a copy of which said death certificate, certified under the hand of the keeper of the same and the seal of the office where such record is made, is hereto attached marked "Respondents' Exhibit B," and prayed to be made a part hereof; that the father of said decedent, William C. Drury, was living at the time of the death of the said Dorothy Drury Siebs (née Ida Drury), and continued so to survive until, to wit, the 28th day of May, A. D. 1908, as is also shown by the death certificate of the said William C. Drury, filed among the records of said District
19 of Columbia, a copy of which, certified under the hand of the keeper of the same and the seal of the office where made, is hereto attached marked "Respondents' Exhibit C," and

prayed to be made a part hereof; that actual notice (though not required by the laws of the State of Washington then in force) of the death of the said Dorothy Drury Siebs (née Ida Drury), was given to the said William C. Drury (father, only heir at law, and next of kin in case of intestacy of the said Dorothy Drury Siebs), as was also actual notice (though not required by the laws of the State of Washington then in force) of the existence of the last will and testament of the said Dorothy Drury Siebs (née Ida Drury) promptly communicated to him by certain letters written by the said Jennie D. Moulton and addressed to her said father, William C. Drury aforesaid, on, to wit, the 1st, 4th, and 5th days of May, A. D. 1902, and the 12th day of June, A. D. 1902, informing him of the death of the said Dorothy Drury Siebs (née Ida Drury) and of her having left a will bequeathing all of her estate to the said Jennie D. Moulton and that in case of intestacy he, the said William C. Drury, would have been, under the laws of the said State of Washington then in force, an heir at law of said decedent; that said letters, properly addressed, were duly and promptly deposited in the United States mails, and were received by said William C. Drury, and your defendants are informed, verily believe, and therefore aver, are now in the custody of the solicitors for the complainant in this cause; that said William C. Drury, though thus fully informed of the facts aforesaid, did not avail himself of his statutory right to contest the validity of said will as and in the manner provided by the laws of the said State of Washington then in force, or in any other manner.

20 That a true and complete compilation of all the laws of the said State of Washington in force at the time of the death of said decedent and during the administration of her estate, as aforesaid, is now in the custody of these defendants ready to be produced to this Honorable Court, and, where pertinent, said laws are prayed to be read as a part of this plea.

That by reason of the premises, and the said laws in force in the said State of Washington at the time of the death of said decedent and during the administration aforesaid, and of the several decrees of the Superior Court aforesaid, complainant George W. Drury, has not, nor has he ever had, any interest whatsoever in the estate of the said Dorothy Drury Siebs (née Ida Drury), or in any part thereof, and that the said complainant has no right, nor has he ever had any right, to institute this or any other suit against said defendants, or either of them, in respect to the estate of the said Dorothy Drury Siebs (née Ida Drury), or any interest therein. Therefore, these defendants do respectively plead in bar to said complainant's bill, and to the discovery therein sought, and pray the judgment of this Honorable Court whether they or either of them shall be compelled to make any further answer to the said bill, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

And as to that part of complainant's bill which charges these defendants, or either of them, with fraud or conspiracy, or both,

these defendants, not waiving their said plea, but relying
21 and insisting thereon, and saving and preserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception which can or may be had to the said bill of complaint, for answer to so much thereof as charges these defendants, or either of them, with fraud or combination, or both, or to so much thereof as these defendants are advised is in any wise material for them, or either of them, to answer unto, *answer* and say that they, and each of them, categorically deny the said fraud or conspiracy, or both, and the charge thereof. And answering further, they, and each of them, categorically and explicitly deny that they, or either of them, went to Bridgeport and obtained the custody of the person of the said Dorothy Drury Siebs (née Ida Drury) and induced her to leave Bridgeport with them, or either of them, in June, 1899, or at any time whatsoever, or that they, or either of them, falsely stated to the said Dorothy Drury Siebs (née Ida Drury) that her father would not see her on the occasion of her visit to Washington in 1899, or that they, or either of them, formed a conspiracy and scheme to divest the said Dorothy Drury Siebs (née Ida Drury) of her estate and to convert the same to their own uses to the exclusion of the said Dorothy Drury Siebs (née Ida Drury) or to the exclusion of any other person whatsoever, or that they, or either of them, acquired control and dominion over the said Dorothy Drury Siebs (née Ida Drury) and her estate and induced and brought about her removal from the City of Washington to the home of these defendants in the City of Tacoma, State of Washington, or that they,
22 or either of them, prevented all communication on the part of the said Dorothy Drury Siebs (née Ida Drury) with the complainant or with any other person or persons whatsoever, or that they, or either of them, kept the complainant or any other person in ignorance of the whereabouts and mental condition of the said Dorothy Drury Siebs (née Ida Drury) or of the whereabouts of her estate and what had become thereof, or that they, or either of them, fraudulently, or in pursuance of conspiracy, removed the body of the said Dorothy Drury Siebs from Portland, Oregon, or any other place, to Tacoma, Washington, and there buried it, or that they, or either of them, withheld from the complainant all knowledge of the death of the said Dorothy Drury Siebs (née Ida Drury), or that they, or either of them, kept the court procedure with reference to the estate of the said Dorothy Drury Siebs from the knowledge of the complainant and all other persons having any possible interest in her said estate except defendant's, or that they, or either of them, cheated and defrauded the complainant out of his rightful share of one-half of the estate of said Dorothy Drury Siebs (née Ida Drury) or in any manner whatsoever, or that they, or either of them, with intent to hinder, delay and defraud complainant, and in pursuance of conspiracy, original or otherwise, converted the entire estate, or any part thereof, of the said Dorothy Drury Siebs (née Ida Drury) to their own use, or secreted the same, or by various means and devices led all persons who might communicate information to the complainant to believe that the estate of said Dorothy Drury Siebs (née Ida

Drury) had by her become wasted until practically nothing remained, or that in furtherance of conspiracy to defraud complainant they, or either of them, have planned to dispose of all their right, title and interest in the real estate enumerated or set forth in complainant's bill and to convert the same into cash and secrete the same and depart the jurisdiction.

And having thus fully answered so much of said bill of complaint as charges these defendants, or either of them, with fraud or combination, or both, or so much thereof as these defendants are advised is in any wise material for them, or either of them, to answer unto, these defendants pray to be hence dismissed with their reasonable costs in this behalf most wrongfully incurred.

HARGROVE & MORRIS,
Solicitors for Defendants.

I, J. L. Hargrove, do hereby certify that I am one of the solicitors and of counsel for defendants in this cause; that in my opinion the plea herein interposed by them is well founded in law.

J. L. HARGROVE,
Solicitor and of Counsel for Defendants.

DISTRICT OF COLUMBIA, ss:

This 27th day of October, A. D. 1908, before me the subscriber a notary public in and for the District aforesaid, personally appeared Jennie D. Moulton, one of the defendants above-named, and made oath that the plea by the defendants interposed in the above-named cause is not interposed for delay and the same is true in fact.

JENNIE D. MOULTON.

24 Subscribed and sworn to before me this 27th day of October, A. D. 1908.

[SEAL.]

N. S. FAUCETT,
*Notary Public in and for the
District of Columbia.*

DISTRICT OF COLUMBIA, ss:

I, Jennie D. Moulton, do solemnly swear that I have read the foregoing and annexed answer and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

JENNIE D. MOULTON.

Subscribed and sworn to before me this 27th day of October, A. D. 1908.

[SEAL.]

N. S. FAUCETT,
*Notary Public in and for the
District of Columbia.*

25

"RESPONDENTS' EXHIBIT A."

In the Superior Court of the State of Washington for Pierce County.
(In Probate.)

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased

Petition for Probate of Will.

STATE OF WASHINGTON,
County of Pierce, ss:

To the Hon. W. O. Chapman, Judge of the Superior Court of the
County of Pierce, State of Washington:

The petition of E. D. Wilcox, of Tacoma, County of Pierce, State of Washington, respectfully shows that Dorothy Drury Siebs died on or about the 30th day of April, A. D. 1902, at Steilacoom, in Pierce County, State of Washington.

That said deceased at the time of her death was a resident of the County of Pierce, in said State of Washington, and left estate consisting of personal property.

That the probable value and character of said property are as follows, to-wit: Six Thousand Dollars, and consists of railroad bonds, mining stock, personal effects and cash; that there are no debts, except funeral expenses and expenses of last sickness.

That the estate and effects for and in respect of which Probate of Will hereinafter mentioned is hereinafter applied for does not exceed the sum of Six Thousand Dollars.

26 That said deceased left a will bearing date the 25th day of July, 1899, which said will is now in the possession of E. D. Wilcox, your petitioner, which your petitioner believes to be the last will and testament of said deceased, and which is herewith presented to said Superior Court.

That Jennie Drury Moulton is named in said will as executrix thereof, and your petitioner resides at Tacoma, Pierce County, State of Washington, aged about — years. That Jennie Drury Moulton is named therein as devisee.

That the subscribing witnesses to said will are Fred C. Miller, residing in the County of Pierce, and E. D. Wilcox, residing in the County of Pierce.

That the next of kin of said testatrix whom your petitioner is advised and believes, and therefore alleges, to be the heir at law of said testatrix, and the name, age and residence of said heir, Wm. C. Drury, Washington, D. C., age about 71 years.

That at the time said will was executed, to-wit: on the said 25th day of July, 1899, the said testatrix was over the age of eighteen years, to-wit: of the age of 35 years or thereabouts, and was of sound and disposing mind, and not acting under duress, menace,

fraud or undue influence, and was in every respect competent, by last will, to dispose of her estate.

That said will is in writing, signed by the said testatrix and attested by the said subscribing witnesses, at the request of said testatrix, subscribing their names to the said will in the presence of said testatrix and in the presence of each other; and that as your
27 petitioner is advised and therefore alleges, said witnesses at the time of attesting the execution of said will were and now are competent.

That Jennie Drury Moulton, named in said will as executrix thereof, consents to act as such. Wherefore your petitioner prays that the said will may be admitted to probate and that letters testamentary be issued to her and that for that purpose the Court appoint a time for proving said will and that all persons interested be notified and directed to appear at the time appointed for approving the same; and subpoenas be directed to be issued to the said subscribing witnesses to the said will, residing in the said Pierce County, and that all other necessary and proper orders may be made in the premises, and your petitioner will ever pray, etc.

E. D. WILCOX,
Attorney for Petitioner.

Dated May 1st, A. D. 1902.

No. 3367. In the Superior Court of the State of Washington, for Pierce County. (In Probate.) Petition for Probate of Will.

Filed in Superior Court, May 3, 1902.

ROBERT P. RIGNEY, *Clerk*,
By E. E. WHITE, *Dep.*

28 In the Superior Court of the State of Washington for the County of Pierce. (In Probate.)

No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.

Testimony of Subscribing Witness on Probate of Will.

STATE OF WASHINGTON,
County of Pierce, ss:

E. D. Wilcox, of lawful age and a competent witness, being sworn in open Court, testified as follows:

I reside in the County of Pierce, State of Washington. I knew Dorothy Drury Siebs on the 25th day of July, A. D. 1899, the date of the instrument now shown to me, marked as filed in this Court, on the 3rd day of May, A. D. 1902, purporting to be the last will and testament of the said Dorothy Drury Siebs. I am one of the subscribing witnesses to said instrument. I also knew at the said

date of said instrument Fred C. Miller, the other of said subscribing witnesses. The said instrument was signed and sealed by the said Dorothy Drury Siebs, at Tacoma, in the County of Pierce, on the said 25th day of July, 1899, the day it bears date, in the presence of myself and of said Fred C. Miller, and the said Dorothy Drury Siebs thereupon published the said instrument as, and declared to us the same to be, *his* last will and testament, and requested us in attestation thereof to sign the same as witnesses.

29 The said Fred C. Miller and I then and there in the presence of the said Dorothy Drury Siebs, and in the presence of each other, subscribed our names as witnesses to the said instrument.

At the time of executing said instrument, to-wit: the 25th day of July, 1899, the said Dorothy Drury Siebs was over the age of 18 years, to-wit: of the age of 35 years, or thereabouts, and was of sound and disposing mind, and not acting under duress, menace, fraud, undue influence or misrepresentation.

E. D. WILCOX.

Subscribed and sworn to in open Court before me this 5th day of May, A. D. 1902.

GEO. N. HULCE,
Deputy Clerk.

Filed in Superior Court, May 5, 1902.

ROBERT P. RIGNEY, *Clerk.*

In the Superior Court of the State of Washington for the County of Pierce. (In Probate.)

No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.

Testimony of Subscribing Witness on Probate of Will.

STATE OF WASHINGTON,
County of Pierce, ss:

30 Fred C. Miller, of lawful age and a competent witness, being sworn in open Court, testifies as follows:

I reside in the County of Pierce, State of Washington. I knew Dorothy Drury Siebs on the 25th day of July, A. D. 1899, the date of the instrument now shown to me, marked as filed in this Court on the 3rd day of May, A. D. 1902, purporting to be the last will and testament of the said Dorothy Drury Siebs. I am one of the subscribing witnesses to said instrument. I also knew at the said date of said instrument E. D. Wilcox, the other of said subscribing witnesses. The said instrument was signed and sealed by the said Dorothy Drury Siebs at Tacoma, in the County of Pierce, on the said 25th day of July, 1899, the day it bears date, in the presence of my-

self and of the said E. D. Wilcox, and the said Dorothy Drury Siebs, thereupon published the said instrument as, and declared to us the same to be her last Will and Testament and requested us in attestation thereof to sign the same as witnesses.

The said E. D. Wilcox, and I, then and there in the presence of the said Dorothy Drury Siebs, and in the presence of each other, subscribed our names as witnesses to the said instrument.

At the time of executing said instrument, to-wit: the 25th day of July, 1899, the said Dorothy Drury Siebs, was over the age of 18 years, to-wit: of the age of 35 years, or thereabouts, and was of sound and disposing mind, and not acting under duress, menace, fraud, undue influence or misrepresentation.

FRED C. MILLER.

31 Subscribed and sworn to in open Court before me this 5th day of May, A. D. 1902.

GEO. N. HULCE,
Deputy Clerk.

Filed in Superior Court, May 5, 1902.

ROBERT P. RIGNEY, *Clerk.*

In the Superior Court of the State of Washington for Pierce County.
(In Probate.)

No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.

Affidavit as to Last Will.

I, Jennie Drury Moulton, being duly sworn, depose and say that the will of Dorothy Drury Siebs, deceased, filed in this Court May 3rd, 1902, and duly admitted — probate May 5th, 1902 is, to the best of my knowledge and belief, the last will and testament of said Dorothy Drury Siebs, and that I know of no other and subsequent will of said deceased.

JENNIE DRURY MOULTON.

Subscribed and sworn to before me this 9th day of May, 1902.

E. D. WILCOX,
Notary Public, Tacoma, Washington.

Filed in Superior Court, May 13, 1902.

ROBERT P. RIGNEY, *Clerk.*

32 In the Superior Court of that State of Washington in and for the County of Pierce. (In Probate.)

No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.

Order Admitting Will to Probate.

The petition of E. D. Wilcox heretofore filed herein, praying that a certain document purporting to be the last will and testament of Dorothy Drury Siebs, deceased, be admitted to probate, coming on regularly to be heard this day, and it appearing to the Court that said Dorothy Drury Siebs died on or about the 30th day of April, A. D. 1902, at Fort Steilacoom, Pierce County, State of Washington, leaving estate in the County of Pierce, State of Washington; that the said document is the last will and testament of said Dorothy Drury Siebs, deceased; that it was duly executed by her in her lifetime; that the same was duly attested as required by law; that said decedent at the time of executing said will was of lawful age and of sound mind and not under duress, menace, fraud or undue influence, or in any respect incompetent to execute said will.

It is therefore ordered, That said document be and is hereby admitted to probate as the last will and testament of Dorothy Drury Siebs, deceased.

It is further ordered, That Jennie Drury Moulton, the person named in said will as executor be and she is hereby appointed executor of said last will and testament to serve without bond — letters testamentary as provided by law.

33 Dated this 5th day of May, A. D. 1902.

W. O. CHAPMAN, *Judge.*

Filed in Superior Court, May 5, 1902.

ROBERT P. RIGNEY, *Clerk.*

Ent. Jour. R., Page 383, May 5, 1902.

Last Will and Testament.

I, Dorothy Drury Siebs, of Tacoma, Pierce County, Washington, (wife of Wm. H. Siebs), formerly of Bridgeport, Connecticut, being over Twenty-one years of age, and of sound and disposing mind, memory and understanding, and being conscious of the uncertainty of life, do make, publish and declare this to be my Last Will and Testament, hereby revoking and cancelling any and all wills and codicils by me at any time made, that is to say,

First.

I direct that upon my death that my funeral shall be conducted according to my station in life, and that the expenses of my last

sickness and funeral expenses, and all just debts by me owing at the time of my death shall be paid as soon as practicable by my executrix hereinafter named, out of any money or property which I may leave at my death.

Second.

I hereby give, devise and bequeath unto my beloved sister Jennie Drury Moulton, of Tacoma, Washington, all the property, and effects of whatsoever kind and nature, and wheresoever situated, 34 of which I may die seized or possessed, or in which I may have any interest, in specie, to have and to hold the same unto herself, her heirs and assigns forever. And I hereby declare and affirm that all my property and effects is my separate property.

Third.

I further direct that in case of the death of my said sister, Jennie Drury Moulton, prior to my death, then and in that event, I give devise and bequeath unto the children of my said sister, Jennie Drury Moulton, share and share alike, all of the property and effects of whatsoever kind and nature, and wheresoever situated, of which I may die seized or possessed, or in which I may have any interest, in specie, to have and to hold the same unto themselves, their heirs and assigns forever.

DOROTHY DRURY SIEBS.

Fourth.

I hereby nominate and appoint my said sister, Jennie Drury Moulton, sole executrix of this my Last Will and Testament, and direct that she be allowed to serve without bond.

Fifth.

It is my wish and desire, and I hereby direct, that this my Last Will and Testament shall be settled outside of, and without the intervention of the Superior or other Court, having jurisdiction of the settlement of my estate, in accordance with Section 955 of Volume 2, Hill's Annotated *Statutes* and Codes of Washington, and 35 that upon my death, it shall only be necessary to establish this as my last will and testament in such Court, and that thereupon the title to all property and effects by me left shall vest in my said sister, Jennie Drury Moulton, and that my estate shall be settled and managed by her my said executrix and devisee without any further action by such Court; that she shall not be required to file any inventory of my said estate or make any report to said Court, or account to said Court for any of her acts in the settlement of my said estate.

In witness whereof, I have hereunto set my hand and seal this 25th day of July, A. D. Eighteen Hundred and Ninety-nine.

DOROTHY DRURY SIEBS, *Née* DRURY. [SEAL.]

STATE OF WASHINGTON,
County of Pierce, ss:

We, the undersigned, witnesses hereby certify that at Tacoma, Washington, on this 25 day of July, 1899, the above and foregoing instrument, consisting of two pages written in typewriter, on two sheets of paper, was signed in our presence by Dorothy Drury Siebs, who is personally known to us to be the person therein described, and she at the same time declared the same to be her Last Will and Testament, and that she thereby revoked all former wills and codicils by her at any time made, and at her request in her presence, and in the presence of each other, we have hereunto subscribed our names hereto as witnesses.

FRED C. MILLER,
Residing at Tacoma, Washington.
E. D. WILCOX,
Residing at Tacoma, Washington.

36 Filed in Superior Court, May 3, 1902.
ROBERT P. RIGNEY, *Clerk*.
E. E. WHITE, *Dep*.

Recorded at Page 220, Book 5 of Wills, May 5, 1902.
ROBERT P. RIGNEY, *Clerk*.
By E. E. WHITE, *Dep*.

In the Superior Court of the State of Washington for Pierce County.
No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.
Notice to Creditors.

Notice is hereby given to all creditors of Dorothy Drury Siebs, late of Tacoma, Pierce County, Washington, to exhibit them with the necessary vouchers within one year after the first publication of this notice, to the undersigned, executrix of the estate of said deceased, at the office of E. D. Wilcox, 211 French Bldg., Tacoma, Washington, that being the place for the transaction of the business of said estate.

Date of issuing and first publication of this notice May 17, 1902.
JENNIE DRURY MOULTON,
Executrix of said Estate.

Affidavit of Publication.

STATE OF WASHINGTON,
County of Pierce, ss:

37 I, T. J. Bell, being first duly sworn, on oath, depose and say: That I am the business manager of the Tacoma New

Herald, which is a newspaper printed and published in Pierce County, Washington; And that the notice to creditors, estate of Dorothy Drury Siebs, of which the attached is a printed copy as published, was published in said newspaper once each week for five consecutive weeks, to-wit:

On the 17th day of May, 1902;
the 24th day of May, 1902;
the 31st day of May, 1902;
the 7th day of June, 1902;
the 14th day of June, 1902;
the — day of —, 190—;
the — day of —, 190—;
the — day of —, 190—;

That said Newspaper was generally circulated among its regular subscribers during all of said time, and that said notice was published in the newspaper proper and not in supplement form.

T. J. BELL.

Subscribed and sworn to before me this 14 day of Jun-, 1902.

[NOTARIAL SEAL.]

W. H. HARRIS,

Notary Public in and for the State of Washington,

Residing at Tacoma, Pierce County.

Filed in the Superior Court Jul- 9, 1902.

ROBERT P. RIGNEY, *Clerk.*

E. E. WHITE, *Dep.*

38 In the Superior Court of the State of Washington for Pierce County.

No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.

Inventory.

Come now Jennie D. Moulton, executrix of the Last Will and Testament of Dorothy Drury Siebs, and presents to this Honorable Court her inventory of all the property and effects belonging to said deceased that have come into her hands, viz:

Real estate	None.
Cash	183 992

Bonds and Stocks.

Bond No. M-55493, issued by the Reading Company, and the Philadelphia & Reading Coal & Iron Company, due Jan'y 1, 1997, bearing four per cent. interest, payable semi-annually, last interest coupon attached No. 11, due July 1st, 1902.....	1000.00
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Bond No. M-55495, issued by the Reading Company, and the Philadelphia & Reading Coal & Iron Company, due Jan'y 1, 1997, bearing four per cent. interest, payable semi-annually, last interest coupon attached No. 11, due July 1, 1902	1000.00
Bond No. M-55496, issued by the Reading Company, and the Philadelphia & Reading Coal & Iron Company, due Jan'y 1, 1997, bearing four per cent. interest, payable semi-annually, last interest coupon attached No. 11, due July 1, 1902	1000.00
Bond No. 2215, issued by the Milwaukee, Lake Shore & Western Company, due May 1, 1921, bearing six per cent. interest, payable semi-annually, last coupon attached No. 40, due Nov. 1, 1902.....	1000.00
39 Bond No. 1169, issued by the Fort Worth & Denver City Railway Company, due Dec. 1, 1921, bearing six per cent. interest, payable semi-annually, last coupon attached, due June 1, 1902.....	1000.00
Bond No. 411, issued by the Fort Worth & Denver City Railway Company, due Dec. 1, 1921, bearing six per cent. interest, payable semi-annually, last coupon attached due June 1, 1902.....	1000.00

The last two bonds mentioned draw only four per cent. interest prior to the interest payment due June 1, 1901, and coupons prior to that date are stamped "that \$20.00 will be accepted in lieu of the face of same \$30.00."

Certificate No. 22, for 5000 shares of the Capital Stock of Bassick Gold Mine Co., of the par value of \$1.00 per share	5000.00
Certificate No. 23, for 3334 shares of the Capital Stock of Bassick Gold Mine Co., of the par value of \$1.00 per share	3334.00

The value of the foregoing stock is unknown to this guardian.

Jewelry and Personal Effects.

1 Gold Breast Pin, heart shape, set with Moonstones and Diamonds.

1 Pair gold Intaglia Link Cuff Buttons.

1 gold chain Bracelet.

1 small Tiffany, open face Watch and Pin, gold with Diamond ornament on Watch, watch numbered 71,484.

1 small gold Neck Chain.

1 plain 18k gold band Ring.

1 square set, Blue stone in centre, 12 small Diamonds surrounding it, gold Ring.

1 gold Ring, set with 1 Sapphire and 2 Diamonds.

1 gold Ring, set Ruby in centre, surrounded by 12 small Diamonds.

- 40 1 gold Ring, set with two Rhinestones.
 1 *solitaire* Diamond Ring.
 1 gold pendant with purse, pencil, memorandum tablet
 and two lockets attached.
 1 gilt purse with long chain attached.
 1 gilt Smelling Salts Bottle.
 1 oval gold Locket, with ward's picture in it, taken when a child.
 1 horseshoe shaped pendant, large blue stone in center, 11 Rhine-
 stones outside.
 1 star Breast Pin, with 24 points, set with Diamond in center and
 Brilliants in points.
 1 gold clover leaf Breast Pin, set with Pearls.
 1 leatherett- covered Jewel Case.
 1 small gilt Clock.
 1 lady's Bicycle.
 1 Smith & Wesson, 5 shot, 32 caliber, Revolver.
 1 Banjo.
 3 boxes of miscellaneous Books, largely paper covered Novels.
 1 lot of Photographs of personal friends of ward.
 1 leather Trunk.
 6 canvass covered Trunks.
 1 leather Suit Case.
 2 bbls. Bric-a-brac.
 2 boxes Framed Pictures, Etchings and Engravings.

The Clothing and Wearing Apparel of ward, all of which has been worn more or less.

Life Insurance Policy No. 148,932, Equitable Life Assurance Society on life of W. H. Siebs, for \$750.00, paid up policy, payable to W. H. Siebs, if living Nov. 19, 1913, if he is not living, then to Dorothy Drury Siebs, if living, if she is not living, then to his heirs. All interest of W. H. Siebs in above assigned to Dorothy Drury Siebs, and assignment attached to policy.

41 Policy No. 50,783, Berkshire Life Ins. Co., dated Dec. 8, 1896, for \$3000, payable to Dorothy Drury Siebs, in case she is living, if not then to the heirs of the insured, W. H. Siebs.

This policy, I believe, has lapsed, but has a small paid up value. All interest of W. H. Siebs in above assigned to Dorothy Drury Siebs, and assignment attached to policy.

Certificate of membership of W. H. Siebs, No. 3525, for \$2000, in Loyal Additional Benefit Association, which entitles Dorothy Drury Siebs to \$2000 on death of W. H. Siebs. This certificate is understood not to be in force.

That there are no debts against said estate except the funeral expenses due to J. L. Roberts & Son, amounting to \$227.00, and the expenses of administration, and said estate is fully solvent.

That the last will and testament of said deceased provides that said estate be settled outside and without the intervention of the Court having probate jurisdiction.

That Jennie Drury Moulton is the sole devisee under said will.
 JENNIE DRURY MOULTON.

E. D. WILCOX,
Attorney for Executrix.

STATE OF WASHINGTON,
County of Pierce, ss:

Jennie D. Moulton, executrix of the estate of Dorothy Drury Siebs, deceased, being duly sworn, says: That the foregoing inventory contains a true statement of all the estate of said deceased which has come to the knowledge and possession of said executrix, and particularly of all money belonging to said deceased, and of all just claims of the said deceased against the said executrix.

JENNIE DRURY MOULTON.

42 Subscribed and sworn to before me this 9th day of July,
A. D. 1902.

E. D. WILCOX,
Notary Public in and for the State of
Washington, Residing at Tacoma.

Filed in Superior Court, July 9, 1902.

ROBERT P. RIGNEY, Clerk.
E. E. WHITE, Dep.

In the Superior Court of the State of Washington for Pierce County.

No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.

Order.

Jennie Drury Moulton, the Executrix of the Last Will and Testament of Dorothy Drury Siebs, having returned to and filed in this Court her inventory of all the property of said estate in the manner required by law, and the Court being now fully advised in the matter, finds:

1.

That Dorothy Drury Siebs died on the 30th day of April, 1902, in Pierce County, Washington, and that heretofore, on the 5th day of May, 1902, the last will and testament of said Dorothy Drury Siebs was duly admitted to probate by this Court.

2.

43 That by the terms of said will Jennie Drury Moulton is appointed sole executrix of said Last Will and Testament, and it is provided by said will that the same shall be settled outside of and without the intervention of the probate court or other court having jurisdiction of the settlement of estates and the probate of wills and all that it shall be necessary to do is to establish said will in the proper Court.

3.

That the said executrix has given notice to creditors of said estate to present their claims, as provided by law.

4.

That the estate of said deceased is fully solvent and fully able to pay all indebtedness against it.

5.

That Jennie Drury Moulton, is the sole devisee under said last will and testament, and is by the terms thereof entitled to all the property and effects of said deceased, subject to the payment of the debts of said estate.

Wherefore, By reason of the law and the premises, the estate of said Dorothy Drury Siebs, is hereby declared fully solvent, and the said Jennie Drury Moulton, as executrix of said estate is authorized and empowered to settle said estate as provided by said last will and testament, without further intervention of this Court, and to deliver to the devisee named in said will, Jennie Drury Moulton, all of the property belonging to said deceased, to have and to hold the same to herself, her heirs and assigns to her own use forever.

44 Done in open Court this Ninth day of July, 1902.

W. O. CHAPMAN, *Judge*.

Filed in Superior Court, July 9, 1902.

ROBERT P. RIGNEY, *Clerk*.

E. E. WHITE, *Dep.*

Ent. Jour. R, Page 536, July 9, 1902.

In the Superior Court, State of Washington, for Pierce County.

No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.

Final Report of Executrix.

Comes now Jennie Drury Moulton, Executrix of the Last Will and Testament of Dorothy Drury Siebs, and represents and shows to this Honorable Court:

1.

That by the order of this Court made on the 9th day of July, 1902, all the property and estate of said deceased was under the terms of said last will and testament turned over and delivered to the devisee therein named, Jennie Drury Moulton, and your executrix was authorized and directed to settle said estate without further intervention of Court.

2.

45 That your executrix, as heretofore reported to this Court, caused notice to creditors to present their claims, to be published in the Tacoma New Herald, a newspaper published and printed at Tacoma, Pierce County, Washington, for five successive weeks, to-wit: from May 17th, 1902, to June 14th, 1902, both

dates inclusive, as more fully appears by the affidavit of publication on file herein.

3.

That no claims against said estate have been presented to your executrix or filed in Court and the time for presenting and filing such claims has expired. That there is nothing further to be done in the settlement of said estate, the same having been fully settled according to law and said will.

Wherefore, Your Executrix asks that she be discharged from further obligations herein.

E. D. WILCOX,
Att'y for Executrix.

STATE OF WASHINGTON,
County of Pierce, ss:

Jennie Drury Moulton, being duly sworn, on oath, says: That she is the person named as executrix in the following petition; that she has read the same and knows the contents thereof; that she believes the same to be true.

JENNIE DRURY MOULTON.

Subscribed and sworn to before me Aug. 12, 1903.

E. D. WILCOX,
Notary Public, Tacoma, Washington.

Filed in Superior Court, Aug. 20, 1903.

A. M. BANKS, *Clerk.*

46 In the Superior Court, State of Washington, for Pierce County.

No. 3367.

In the Matter of the Estate of DOROTHY DRURY SIEBS, Deceased.

Order Discharging Executrix.

Jennie Drury Moulton, the Executrix under the Last Will and Testament of Dorothy Drury Siebs, having this day filed in this Court her final report showing that no claims have been presented to her against said estate or filed in this Court, and that the time for so presenting claims has expired, and that there is nothing more to be done by said executrix in said estate, on motion of said executrix;

It is ordered that said report be, and same is hereby approved, and said executrix, Jennie Drury Moulton, be, and she is hereby relieved and discharged from all further obligations and liability herein.

Done in open Court this 20th day of August, 1903.

W: O. CHAPMAN, *Judge.*

Ent. J. T. P. 259, August 20, 1903.

Filed in Superior Court, Aug. 20, 1903.

A. M. BANKS, *Clerk.*

STATE OF WASHINGTON,
County of Pierce, ss:

47 I, J. F. Libby, County Clerk of Pierce County, State of Washington, and by virtue of the laws of the State of Washington, *ex-officio* Clerk of the Superior Court of the State of Washington, for Pierce County, do hereby certify that the above and foregoing 17 sheets of paper, in typewriting, not including this sheet, are a full, true, correct and complete copy of the original. Petition for Probate of Will; Testimony of Subscribing Witness, Fred C. Miller; Testimony of Subscribing Witness, E. D. Wilcox; Affidavit of Last Will; Order Admitting Will to Probate; Last Will and Testament; Notice to Creditors, and Proof of Publication; Inventory; Order, July 9, 1902; Final Report of Executrix; Order Discharging Executrix; In the Matter of the Estate of Dorothy Drury Siebs, the same being all of the records and files in the above entitled matter, as the same appear on file and of record in the Superior Court of Pierce County, Washington.

Witness my hand and the Seal of said Superior Court, this 19th day of October, 1908.

[SEAL.] J. F. LIBBY,
County Clerk and Clerk of the Superior Court of
the State of Washington for Pierce County.

In the Superior Court of the State of Washington for Pierce County.

STATE OF WASHINGTON,
County of Pierce, ss:

48 I, W. O. Chapman, the duly elected, qualified and acting Judge of the Superior Court of the State of Washington, for the County of Pierce, which said Court is a Court of record, do hereby certify that J. F. Libby, whose name is subscribed to the annexed certificate was at the date of the same, and is now, the duly elected, qualified and acting County Clerk of Pierce County, Washington, and by the laws of the State of Washington, *ex-officio* Clerk of the Superior Court of the State of Washington for Pierce County, and full faith and credit are due to all his official acts as such; that I am well acquainted with the Seal of said Court, and the signature of said J. F. Libby, whose name is appended to the foregoing certificate as Clerk of said Superior Court, and that his signature and the Seal of said Court are genuine, and that the attestation of said Clerk is in due form according to law, and that to all of said proceedings full faith and credit should be given.

Given under my hand at the City of Tacoma, in the County of Pierce, State of Washington, this 19th day of October, A. D. 1908.

[SEAL.] W. O. CHAPMAN,
Judge of the Superior Court of the
State of Washington, for Pierce County.

7. Occupation
8. Birthplace of Deceased: Washington, D. C. } If born in the United States, give State Territory or District; otherwise, give county.
9. Birthplace of Father..... }
10. Birthplace of Mother
11. Duration of Residence in This District: Life.
12. Place of Death.....
13. Cause of Death. Duration.
Primary: Phthisis. 2 years.
Immediate.....

51

14. If Death *Occurred* in an Institution, give :
Name of Institution
Length of Time Deceased was an Inmate.....
15. If Deceased Did Not Die at his or her Residence, give :
Place of Residence.....

I hereby certify that I attended the deceased professionally during.....last illness.

....., *M. D.*
Address.....

To be Filled Out and Signed by the Undertaker.

Place of Burial, Mr. Olivet. Date of Burial....., 190...
If Body is to be Buried Outside of the District, State :
Route of Transportation..... Date of Removal....., 190...
Signature....., *Undertaker.*
Address.....

Remarks :.....
.....
.....

Correct. A. C. P. WASHINGTON, D. C., Oct. 24, 1908.

The foregoing is a true and correct copy of a certificate of death on file with the Health Department of the District of Columbia, and duly recorded in the records of said Department.

WM. C. WOODWARD, *M. D.*,
Health Officer, District of Columbia.

[SEAL.]

Attest :
HARRY C. McLEAN,
Chief Clerk.

Certificate of Death.

No. Burial Permit.
180,556.

No. of Record.
180,242.

Full Instructions for the Guidance of those using this
Blank, and Space for Remarks may be
found on the other side.

1. Date of this Death: May 28, 1908.
2. Full Name of Deceased: Wm. C. Drury.
If an unnamed infant, insert full Name of both parents.

- | | | | |
|-----------|-------------|-------------|-------------|
| 3. Sex: | 4. Age: | 5. Color: | 6. Conjugal |
| | | | Conditions: |
| Male. | Years 77. | White. | [Single.]* |
| | | [Colored]* | [Married]* |
| [Female]* | Months..... | [Indian]* | [Widowed]* |
| | | | Widowed. |
| | | [Chinese]* | [Divorced]* |
| | Days..... | [Japanese]* | |

Under sex, color, and conjugal condition, strike out the words not applicable.

Under color, the term "colored" includes all of African descent, whether of pure or mixed blood.

7. Occupation : Merchant (Retired).
8. Birthplace of Deceased : D. C.
9. Birthplace of Father : Maryland.
10. Birthplace of Mother : Maryland.
11. Duration of Residence in This District : Lifetime.
12. Place of Death, 918 F St. S. W.
13. Cause of Death.
- Primary : Senile Gangrene of Left Foot.
- Immediate : Exhaustion.
- If born in the United States, give State, Territory or District; otherwise, give county.
- Duration.
6 mos.

I hereby certify that I attended the deceased professionally during his last illness.

G. R. LEE COLE, *M. D.*
Address: 418 7th St. S. W.

[*Words enclosed in brackets erased in copy.]

To be Filled Out and Signed by the Undertaker.

Place of Burial: Congressional Cemetery.

Date of Burial: May 30, 1908.

If Body is to be Buried Outside of the District, State:

Route of Transportation..... Date of Removal.... , 190...

Signature: FRANK A. SPEARE,
Undertaker.

Address: 940 F St. N. W.

Remarks:

.....

.....

Correct. A. C. P.

WASHINGTON, D. C., Oct. 24, 1908.

The foregoing is a true and correct copy of a certificate of death on file with the Health Department of the District of Columbia, and duly recorded in the records of said Department.

WM. C. WOODWARD, M. D.,
Health Officer, District of Columbia.

[SEAL.]

Attest: HARRY C. McLEAN,
Chief Clerk.

54

Exceptions and Objections to Answer.

Filed November 7, 1908.

In the Supreme Court of the District of Columbia.

Eq. No. 28043.

GEORGE W. DRURY, Complainant,

vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

Comes now the complainant by his attorneys Kappler & Merillat, and takes the subjoined exceptions to the answer put in by the above-named defendants to the said complainant's bill of complaint:

Exception I. For that the said defendants Jennie Moulton and Clarence Moulton neither of them in their answer to complainant's bill of complaint has answered any one or all of the interrogatories propounded by complainant, and an answer to which interrogatories was called for by the bill of complaint, and neither of the defendants has answered and set forth according to the best and utmost of his or her knowledge, remembrance, information and belief, the facts set forth in said interrogatories and required by said interrogatories to be answered.

Exception II. For that the said defendants Jennie Moulton and Clarence Moulton have undertaken to answer the complainant's bill

of complaint, but have not responded to the same fully and to the
best of their knowledge, information and belief as appears in
55 the allegations in the said bill of complaint and the answer
thereto.

In all which particulars the said complainant insists that the
said answer of the defendants is altogether evasive, imperfect and
insufficient.

Wherefore, the said complainant doth except thereto and prays
the court that the said defendants Jennie Moulton and Clarence
Moulton may be compelled to amend the same, to put in a full and
sufficient answer to said bill of complaint, and to answer the inter-
rogatories attached to said bill of complaint and made a part thereof.

Motion to Dismiss Bill.

Filed November 9, 1908.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 28043.

GEORGE W. DRURY, Complainant,
vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

Come now the defendants and by their solicitors, Hargrove & Mor-
ris, move the Court to dismiss the complainant's bill as against
these defendants, and each of them, in the above-entitled
56 cause, for the reason that the said complainant by his failure
to reply to the joint plea in bar of said defendants' filed herein
on, to wit, the 27th day of October, A. D., 1908, a true copy of which
said plea was on said last named day delivered to complainant's
solicitors, or to set said plea down for argument on the rule day oc-
curring next thereafter, as provided by Equity rule No. 33 of this
Honorable Court, has admitted the truth and sufficiency of said plea.

HARGROVE & MORRIS,
Solicitors for Defendants.

Messrs. Kappler & Merillat, Attorneys for Complainant.

GENTLEMEN: Please take notice that we will present the above
motion for hearing before the Supreme Court of the District of
Columbia, holding an Equity Court, at 10 o'clock A. M., Friday,
November 13, A. D., 1908, or as soon thereafter as counsel may be
heard, and ask for a ruling thereon.

HARGROVE & MORRIS,
Solicitors for Defendants.

57

Decree Dismissing Bill.

Filed December 2, 1908.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 28043.

GEORGE DRURY, Complainant,

vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

This cause coming on to be heard upon the bill of complaint herein, and upon the joint plea in bar of the defendants thereto, supported by the joint and several answer of the said defendants to that part of said bill charging these defendants with fraud or combination, and upon the motion of defendants to dismiss the complainant's bill as against them, and each of them, for the reason that the said complainant by his failure to reply to the joint plea in bar of said defendants or to set said plea down for argument on the rule day occurring next thereafter, as provided by Equity Rule No. 33 of this Honorable Court, has admitted the truth and sufficiency of said plea, and upon the oral arguments of solicitors for the complainant and the defendants, upon due consideration of said pleadings and said motion and such arguments, and the Court being fully advised in the premises, it is this 2nd day of December, A. D., 1908,

58 Ordered, adjudged, and decreed, That complainant's bill be, and the same is hereby, dismissed with costs.

By the Court,

WRIGHT, *Justice.*

Order Allowing Appeal and Fixing Bond.

Filed December 14, 1908.

In the Supreme Court of the District of Columbia.

Eq. No. 28043.

GEORGE W. DRURY, Complainant,

vs.

JENNIE DRURY ET AL.

From the decree rendered on December 2, 1908, dismissing Complainants bill in the above entitled cause George W. Drury the Complainant having heretofore on said December 2, 1908; noted an appeal in open court to the Court of Appeals of the District of Columbia and the same having been allowed him on said second day of December 1908 with all the parties present before the court it is by

the Court further adjudged and ordered: that the penalty of the appeal bond for costs on appeal to be given by said complainant on such bill is fixed in the sum of one hundred dollars, or fifty dollars in lawful money in lieu of a bond.

WRIGHT, *Justice*.

Memorandum.

December 14, 1908.—\$50 deposited in lieu of appeal bond.

Directions to Clerk for Preparation of Transcript of Record.

Filed December 31, 1908.

In the Supreme Court of the District of Columbia.

Eq. No. 28043.

GEORGE W. DRURY, Complainant,

vs.

JENNIE MOULTON ET AL., Defendants.

The Clerk will please prepare the record in this cause for appeal to the Court of Appeals of the District of Columbia, said record to consist of the following proceedings:

Bill with interrogatories.

Paper filed, to wit, October 27, 1908, entitled "Plea, Answer and Exhibits of Respondents."

Motion to Dismiss Bill.

Exceptions and Objections to Answer.

Decree Dismissing Bill.

Decree Allowing Appeal and Fixing Bond.

Memo. of Deposit for Costs on Appeal.

Copy of this Order.

KAPPLER & MERILLAT,

Solicitors for Complainant.

Service of copy of the above acknowledged this 31st day of December, 1908.

HARGROVE & MORRIS,

Attorneys for Defendants.

Defendants' Designation of Record and Protest.

Filed January 5, 1909.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 28043.

GEORGE DRURY, Complainant,
vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

The defendants, by their solicitors, Hargrove & Morris, consent that the following part of the designation of record by the solicitors for complainant be included therein:

Bill with Interrogatories.

Plea, Answer, and Exhibits of Respondents.

Motion to Dismiss Bill.

Decree Dismissing Bill.

Order Allowing Appeal and Fixing Bond.

Memorandum of Deposit for Costs on Appeal.

Copy of Designation of Record by Solicitors for Complainant.

61 In addition thereto, the defendants by their said solicitors designate for inclusion in said record a copy of this designation, and the following protest:

The defendants, by their said solicitors, protest against the inclusion in said record of the paper designated by the solicitors for the complainant as "Exceptions and Objections to Answer", and for the following reasons, to wit:

1. That said last named paper was filed by the solicitors for the complainant on November 7, 1908, one day after said solicitors had filed, and served on the solicitors for the defendants, to wit, on November 6, 1908, a paper entitled "Replication", which said paper purported to join issue on the answer filed by the defendants in support of the joint plea filed by them, and was in the words and figures following:

"In the Supreme Court of the District of Columbia.

Eq. No. 28043.

GEORGE W. DRURY, Complainant,
vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

Replication.

The complainant joins issue on the answer filed by the defendants Jennie Moulton and Clarence Moulton in the above-entitled cause.

KAPPLER & MERILLAT,
Attorneys for Complainant."

62 2. That said paper entitled "Replication" was not withdrawn by permission of the Court, nor with the consent of the defendants or their solicitors.

3. That said paper entitled "Exceptions and Objections to Answer" was filed wholly without authority.

4. That said paper entitled "Exceptions and Objections to Answer" was filed without signature or signatures, and so remains.

5. That said paper entitled "Exceptions and Objections to Answer," as well as the one entitled "Replication", was filed several days after the truth and sufficiency of the joint plea in bar of the defendants had been admitted by the complainant.

Dated January 5, 1909.

HARGROVE & MORRIS,
Solicitors for Defendants.

Service of copy of the above acknowledged this 5th day of January, 1909.

KAPPLER & MERILLAT,
Solicitors for Complainant.

63 *Affidavit and Additional Designation for Record.*

Filed January 8, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Eq. No. 28043.

GEORGE W. DRURY, Complainant,
vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

Charles H. Merillat, being first duly sworn, deposes and says: That he has read a paper purporting to be a designation of record, dated January 5, 1908, and signed "Hargrove & Morris;" that said paper omits to state the fact that the paper entitled "Replication" was not filed in the Clerk's Office of the Supreme Court of the District of Columbia and that said Hargrove & Morris were notified by Kappler & Merillat as attorneys for Complainant that they had decided not to file the Replication, but to file instead the "Exceptions and Objections to Answer, a copy of which was left with Hargrove & Morris; that if said paper entitled "Exceptions and Objections to Answer" is without signature, the same was an inadvertence, and was so known to Messrs. Hargrove & Morris, for they were advised that the same was the pleading filed by counsel in the cause as the pleading on which they stood, and at the hearing of the Motion to Dismiss the bill no point whatsoever was raised such as is indicated in their present designation of the record and protest, namely,

64 that the "Exceptions and Objections to Answer" filed was not signed; that it is well known to said Hargrove & Morris that

the real pleading filed by attorneys for Complainant was Exceptions and Objections to Answer, and that they were notified to disregard the Replication, the same not having been filed in Court, and counsel having concluded that before issue joined they should be required to answer the interrogatories propounded to them.

CHARLES H. MERILLAT.

Subscribed and sworn to before me this 8th day of January, A. D. 1909.

[SEAL.]

JAMES R. WATSON,
Notary Public, D. C.

Service of copy of the above acknowledged this 8th day of January, 1909.

HARGROVE & MORRIS,
Solicitors for Defendants.

To the Clerk of the Court:

in making up the designation of record in the above entitled cause you will include the above affidavit.

KAPPLER & MERILLAT,
Attorneys for Complainant.

65 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 64, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript in Equity Cause No. 28043, wherein George W. Drury is Complainant, and Jennie Moulton and Clarence Moulton are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 26th day of January, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

66 Filed Feb. 9, 1909. J. R. Young, Clerk.

THE UNITED STATES OF AMERICA, ss:

[Seal Court of Appeals, District of Columbia.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas in a certain suit in said Supreme Court between George W. Drury, Complainant, and Jennie Moulton and Clarence Moulton,

defendants, Equity No. 28,043, which suit was removed to the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

The paper filed by appellees in said Supreme Court of the District of Columbia, on January 11, 1909, entitled "Additional Designation of Record" and having stamped on the face and back thereof "Filed Jan. 11, 1909. John R. Young, Clerk."

67 You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Court of Appeals, so that you have the same, together with this writ, before the said Court of Appeals forthwith.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 9th day of February, in the year of our Lord one thousand nine hundred and nine.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,

Clerk of the Court of Appeals of the District of Columbia.

[Endorsed:] Court of Appeals of the District of Columbia. No. 1983, January Term, 1909. George W. Drury, Appellant, vs. Jennie Moulton and Clarence Moulton. Writ of Certiorari. Filed Feb. 9, 1909. J. R. Young, Clerk.

68 *Additional Designation of Record.*

Filed Jan. 11, 1909.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 28043.

GEORGE DRURY, Complainant,
vs.

JENNIE MOULTON and CLARENCE MOULTON, Defendants.

To the Clerk of the Court:

In preparing the record in this cause for appeal to the Court of Appeals of the District of Columbia, you will kindly include as a part thereof the following:

The docket entries on Line 7, Page 43, of Equity Docket No. 62, of the Supreme Court of the District of Columbia, showing the following entries:

"Nov. 6. Replication " 25 "

"Nov. 7. Exceptions & Objections to Answer " 25 "

The entry showing the filing of the replication on November 6, is somewhat dimmed by erasure, and the ditto characters are a substitute for the repetition of the word "Filed."

Also include a copy of this designation.

Dated January 11, 1909.

HARGROVE & MORRIS,

Solicitors for Defendants.

Service of copy of the above acknowledged this 11th day of January, 1909.

KAPPLER & MERILLAT,
By EDWIN E. DALY,
Solicitors for Complainant.

69 Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify, in obedience to the Writ of Certiorari hereto attached and returned herewith, that the foregoing is a true and correct copy of the "Additional Designation of Record," filed January 11, 1909, in the case of George Drury vs. Jennie Moulton and Clarence Moulton, No. 28043 Equity, containing the matter omitted from the transcript of the record heretofore transmitted to said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 10th day of February, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] In Equity. No. 28043. George Drury, Complainant, vs. Jennie Moulton and Clarence Moulton. Return to Writ of Certiorari. Court of Appeals, District of Columbia. Filed Feb. 10, 1909. Henry W. Hodges, Clerk.

70 Office of the Clerk, Received Feb. 10, 1909. Supreme Court,
D. C.

THE UNITED STATES OF AMERICA, ss:

[Seal Court of Appeals, District of Columbia.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas in a certain suit in said Supreme Court between George W. Drury, Complainant, and Jennie Moulton and Clarence Moulton, defendants, Equity No. 28043, which suit was removed to the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit: "The docket entries on file in the Supreme Court of the District of Columbia in the above-entitled cause, together with the affidavit of Frank E. Cunningham, assistant clerk, in charge of the docket in the equity branch of the clerk's office of the Supreme Court of the District of Columbia in explanation of the docket entries."

71 You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omis-

73

Affidavit of Frank E. Cunningham.

Filed Feb. 4, 1909.

No. 28043. Equity.

GEORGE DRURY

vs.

JENNIE MOULTON ET AL.

DISTRICT OF COLUMBIA, ss:

Frank E. Cunningham, being first duly sworn, deposes and says: That he is an Assistant Clerk in the Clerk's Office of the Supreme Court of the District of Columbia; that as such Clerk he has charge of the Equity Docket of the Court, and of the receipt and filing of papers; that in the case Eq. 28043 of *George W. Drury v. Jennie Moulton et al.* Charles H. Merillat, while deponent was at work upon the current docket of the Court, gave deponent for filing a paper that was a Replication on the answer filed by the defendants in the above-mentioned cause; that at the same time said Merillat stated that he was in a hurry, that he had been crowded with work, but that he wanted to file the paper because he had been informed that the defendants intended to take a snap judgment because said Merillat was overdue in his pleadings, and said Merillat inquired if anything had been filed; that deponent informed him there had not been, and started to enter the pleading at the appropriate entry in the docket, and while writing informed said Merillat that his time for filing his answer was not yet up, and that said Merillat had further time; whereupon said Merillat immediately asked deponent to give him back the paper, that if his time was not yet up he would want to file another paper in place of it, but had not had

74 time to get the same in shape; that all this occurred right at the Clerk's desk and within a space of not to exceed about two minutes; that deponent had not yet put the file mark of the court upon the paper and then and there returned the same to said Merillat, who subsequently filed a paper entitled "Exceptions and Objections to Answer," which is of record, and deponent thereupon at once erased the docket entry.

FRANK E. CUNNINGHAM.

Subscribed and sworn to before me this 4th day of February, A. D. 1909.

[SEAL.]

JOHN R. YOUNG,

Clerk Supreme Court of the District of Columbia.

75

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify, in obedience to the Writ of Certiorari attached and returned herewith, that the foregoing are true and correct copies of "The Docket Entries" and the "Affidavit of Frank E.

Cunningham" in the case of George Drury v. Jennie Moulton and Clarence Moulton, No. 28043 Equity, containing the matter omitted from the transcript of the record heretofore transmitted to said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 10th day of February, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

[Endorsed:] In Equity. No. 28043. George Drury, Complainant, vs. Jennie Moulton and Clarence Moulton. Return to Writ of Certiorari. Court of Appeals, District of Columbia. Filed Feb. 10, 1909. Henry W. Hodges, Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1983. George W. Drury, appellant, vs. Jennie Moulton *et al.* Court of Appeals, District of Columbia. Filed Jan. 29, 1909. Henry W. Hodges, clerk.

